DOCKET NO: NNH-CV-21-6115824-S	:	SUPERIOR COURT
ELM CITY LOCAL, CACP	:	J.D. OF NEW HAVEN AT NEW HAVEN
v.	:	
CITY OF NEW HAVEN	:	JANUARY 14, 2022

MEMORANDUM OF LAW IN OPPOSITION TO APPLICATION TO VACATE ARBITRATION AWARD

I. INTRODUCTION

The City of New Haven (the "City") hereby submits this Memorandum of Law in Opposition to the Application to Vacate Arbitration Award upholding the termination by the City of New Haven Police Officer Jason Santiago, for unreasonable and excessive use of force against an arrestee. Arbitration Award, Case No. 2021-A-0003 (the "Award") at 3.

II. BACKGROUND

At 7:05 a.m. on Christmas morning 2019, a vehicle operated by Luis Rivera ("Rivera") became disabled on Lombard Street in New Haven. Officer Michael Hinton was dispatched and initially appeared to have the situation under control, when a woman who knows Rivera injected herself at the scene. Sensing he was losing control, Hinton called for backup. A short time later, three more police officers arrived including the grievant Jason Santiago (the "Grievant"). After being on the scene for less than two minutes and thirty seconds, the Grievant stated "I have had enough of this guy" and attempted to take Santiago into custody. *Id.* Rivera resisted and a melee ensued. *After* Rivera was in handcuffs, the Grievant kicked him in the groin with moderate force while Rivera lay on his stomach. *Id.* at 4. The Grievant then lifted Rivera to his feet by his ponytail. Once Rivera was standing, a sound which sounds like spitting can be heard. The Grievant then punched Rivera, who was already handcuffed, in the face knocking him to the

ground and causing him to bleed from the mouth. *Id.* at 5. The Grievant then pointed his finger in Rivera's face and stated, "that's assault second on a police officer," followed by "you don't ever spit in someone's face stupid," and "what are you retarded?" *Id.* Then in front of Rivera's wife, asks if the woman who injected herself at the scene was his "side chick." *Id.* at 6. The above was captured on the various body-worn cameras of the officers on the scene, as well as video from the cellphone of a civilian bystander.

Rivera and the Grievant were both treated for minor injuries, and Rivera was arrested.

The arrest proceeded in the normal course until Lt. David Zannelli of New Haven Police Department, Internal Affairs Division, received an email from the Assistant State's Attorney preparing Rivera's criminal case for trial. In the email she expressed "serious concerns" over the use of force used against Rivera when she viewed the body-worn camera footage. *Id.* at 9.

That email was shared with then New Haven Chief of Police Otoniel Reyes. He ordered an internal affairs investigation into the matter. *Id.* The internal affairs investigation concluded that the Grievant's use of force was indeed unreasonable and excessive insofar as he kicked Rivera in the groin, pulled him up by his ponytail, and violated various General Orders of the Department. The internal affairs investigation did not find the punch to the face unreasonable in light of evidence suggesting that Rivera spat at the Grievant. *Id.* at 10.

After a *Loudermill* hearing with the Grievant where the Grievant showed no remorse, Chief Reyes recommended dismissal of the Grievant to the New Haven Police Commission. In New Haven, only the Police Commission has the authority to fire a police officer. Following a hearing before the New Haven Police Commission, the Grievant was terminated. The Plaintiff, Applicant in this matter, the Union representing New Haven Police Officers, grieved the termination and requested a hearing before the State of Connecticut, Department of Labor, Board

of Mediation and Arbitration ("SBMA"). Dennis Murphy was appointed Chair. Michael Culhane and Betty Kuehnel were the other members of the arbitration panel (the "SBMA Panel"). The submission agreed upon by the Parties was: 1. Did the City have just cause to terminate the Grievant? 2. If not, what shall the remedy be?

After five hearings, by an award dated June 24, 2021 (*id.* at 2), the SBMA Panel unanimously found that the City had just cause to terminate the Grievant. *Id.* at 17.

III. PLAINTIFF'S BASIS FOR ITS APPLICATION TO VACATE THE AWARD

Plaintiff's Application to Vacate Arbitration Award ("Application") can be boiled down to three fundamental claims:

A. The SBMA Panel exceeded its powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made. Application ¶ 8(b).

B. The SBMA Panel was guilty of misconduct (apparently referencing Conn Gen. Stat. § 52-418(a)(3)) because a panel member failed to disclose he is married to the relative of a sponsor of the so-called "Police Accountability Bill" recently passed by the General Assembly. *Id.* ¶ 8(a).

C. The Award does not draw its essence from the Agreement between the Parties because the SBMA Panel (a) failed to conduct a fair hearing by permitting the City to introduce expert testimony on the legal standard for use of force and to opine as to the Grievant's actions, (b) failed to conduct a just cause analysis, (c) made erroneous findings of fact resulting in an irrational application of the law, and (d) based the Award on standards and requirements that are not part of the Parties' agreement, while ignoring standards and requirements which do exist. *Id.* ¶¶ 17-18.

For the reasons discussed below, the Plaintiff's Application to Vacate must be denied as a matter of law.

IV. LEGAL STANDARDS FOR APPLICATIONS TO VACATE

The general principles regarding judicial review of arbitration awards are well established and are highly deferential to upholding the award of an arbitrator. *See, e.g., Officer of Labor Rels. v. Ne. Health Care Emps. Union Dist. 1199, AFL-CIO*, 288 Conn. 223, 230 (2008); *Indus. Risk Ins. v. Hartford Steam Boiler Inspection & Ins.*, 273 Conn. 86, 92 (2005). "Judicial review of arbitral decisions is narrowly confined. . . . When the parties agree to arbitration and establish the authority of the arbitrator through the terms of their submission, the extent of our judicial review of the award is delineated by the scope of the parties' agreement. . . . When the scope of the submission is unrestricted, the resulting award is not subject to de novo review even for errors of law so long as the award conforms to the submission." *McCann v. Dep't of Env't Prot.*, 288 Conn. 203, 213-14 (2008) (internal quotation marks omitted). "Where the submission does not otherwise state, the arbitrators are empowered to decide factual and legal questions and an award cannot be vacated on the grounds that . . . the interpretation of the agreement by the arbitrators was erroneous." *Id.* at 214." *AFSCME, Council 4, Local 1303-325 v. Town of Westbrook*, 309 Conn. 767, 776 (2013); *Waterbury v. Waterbury Police Union*, 176 Conn. 401, 404 (1979). "This court frequently has stated that the award rather than the finding and conclusions of fact controls, and that, ordinarily, the memorandum of the arbitrator is irrelevant." *Bd. of Educ. of the City of Bridgeport v. Bridgeport Education Ass'n*, 173 Conn. 287, 292 (1977); *see also AFSCME, Council 4, Local 2663 v. Dep't of Children & Fams.*, 317 Conn. 238, 259 (2015) ("As previously explained, because the arbitration award clearly resolved the issue presented to the arbitrator and did so while remaining within the confines of the parties' collective bargaining

agreement, the trial court's review should have ended there.") (2015); *Hudson Wire Co. v. Winsted Brass Workers Union*, 150 Conn. 546, 553 (1963) ("[U]nless his memorandum patently shows an infidelity to his obligation, the result reached by the award, and not the memorandum, controls.")

Deference to arbitration notwithstanding, courts have recognized three narrow grounds for vacating arbitration awards in cases where: (1) the award rules on the constitutionality of a statute; (2) the award violates clear public policy or (3) the award contravenes one or more of the statutory proscriptions of Conn. Gen. Stat. § 52–418. *Kellogg v. Middlesex Mut. Assurance Co.*, 326 Conn. 638, 646 (2017). The Plaintiff does not plead that the Award rules on the constitutionality of a statute or that it violates public policy, so those potential grounds for vacating an award will not be addressed.

The statutory grounds for vacatur of an arbitration award at issue are found in Conn. Gen. Stat. §52-418, which provides in pertinent part, that the court

> shall make an order vacating the award if it finds any of the following defects: (1) If the award has been procured by corruption, fraud or undue means; (2) if there has been evident partiality or corruption on the part of any arbitrator; (3) if the arbitrators have been guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence pertinent and material to the controversy or of any other action by which the rights of any party have been prejudiced; or (4) if the arbitrators have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

Conn. Gen. Stat. § 52-418(a).

"A claim that an arbitrator has exceeded his or her powers may be established under § 52-418 in either one of two ways: (1) the award fails to conform to the submission, or, in other words, falls outside the scope of the submission; or (2) the arbitrator manifestly disregarded the law." *Bd. of Educ. of the Town of New Milford v. New Milford Educ. Ass'n*, 331 Conn. 524 (2019) (internal

alterations omitted) (quoting *AFSCME, Council 4, Local 2663*, 317 Conn. at 251). "Because we favor arbitration as a means of settling private disputes, we undertake judicial review of arbitration awards in a manner designed to minimize interference with an efficient and economical system of alternative dispute resolution." *City of New Haven v. AFSCME, Council 4, Local 3144*, 338 Conn. 154, 171 (quoting *Norwalk Police Union, Local 1727, Council 15, AFSCME, AFL-CIO v. Norwalk*, 324 Conn. 618). "In applying this general rule of deference to an arbitrator's award, every reasonable presumption and intendment will be made in favor of the arbitral award and of the arbitrators' acts and proceedings." *Id.* (quoting *State v. Conn. Emps. Union Indep.*, 322 Conn. 713, 721) (internal alterations omitted). Further, it is well established that courts will not substitute their judgment for that of the arbitrator. *Blondeau v. Baltierra*, 337 Conn. 127, 159 (quoting *Stratford v. Int'l Ass'n of Firefighters, AFL-CIO, Local 998*, 248 Conn. 108, 116 (1999)).

"The party challenging the arbitration award bears the burden of producing evidence sufficient to invalidate or avoid [the award.]" *City of Bridgeport v. The Kasper Group, Inc.*, 278 Conn. 466, 474 (2006). The burden of demonstrating the nonconformity of an award to its submission is on the party seeking to vacate it. *Board of Educ. of the City of Hartford v. Hartford Fed'n of Sch. Secretaries*, 26 Conn. App. 351, 353-54 (1992). When the party challenging the award fails to carry this burden, "the court has **no discretion** but to confirm the award." *Lemma v. York & Chapel, Corp.*, 204 Conn. App. 471, 485 (2021) (emphasis added).

V. THERE ARE NO GROUNDS TO VACATE THE AWARD UNDER CONN. GEN. STAT. § 52-418(a).

A. Plaintiff's Brief in Support of Its Application to Vacate Shows a Fundamental Misunderstanding of the Standards for an Application to Vacate.

Plaintiff devotes a considerable portion of its brief to reciting its version of the facts presented at arbitration, then argues in Section IV.A. of its brief that there was not just cause for termination. As discussed above, an application to vacate is not a *de novo* review or "second bite" of the apple. Courts are not permitted to substitute their judgment over that of the arbitrators appointed to decide those very issues. If a court could freely substitute its judgment as to whether the just-cause standard was met, the goals of arbitration would be entirely frustrated. Unless one of the limited bases for vacating an award is established, an application to vacate **must** be denied.

B. The Award Is Final and Definite.

Under Conn. Gen. Stat. § 52-418(a)(4), the test for determining whether an arbitrator has exceeded his powers is whether the arbitrator's award conforms to the statement describing the issue or issues submitted to arbitration. "Our review is limited to a comparison of the award to the submission. Our inquiry generally is limited to a determination as to whether the parties have vested the arbitrators with the authority to decide the issue presented or to award the relief conferred. With respect to the latter, we have explained that, as long as the arbitrator's remedies were consistent with the agreement they were within the scope of the submission." *AFSCME, Council 4, Local 2663*, 317 Conn. at 252 n8 (quoting *Harty v. Cantor Fitzgerald & Co.*, 275 Conn. 72, 84 (2005)). *See also United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 38 (1987) ("As long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed

serious error does not suffice to overturn his decision"). *Accord AFSCME, Council 4, Local 2663*, 317 Conn. at 253.

In this case, the relevant provision of the collective bargaining agreement requires "just cause" for discipline including termination. Application ¶ 4 and Appendix A, Art. 4, Section 1, p. 5. The submission of the Parties was "Did the City have just cause to terminate the Grievant?" Award at 2. The Award of the SBMA Panel was "The City had just cause to terminate the grievant." Award at 17.

As noted *supra*, in Section IV, where the arbitration award clearly resolves the issue submitted, and does so within the confines of the Parties' collective bargaining agreement, the trial court's review must end there. *AFSCME, Council 4, Local 2663*, 317 Conn. at 259. Here, there can be no question that the Award squarely resolves the issue submitted, and the issue submitted was derived from the collectively bargaining agreement. Accordingly, how the SBMA Panel arrived at its decision, and what evidence it considered or gave weight to, is irrelevant. Thus, the decision is final and definite. *Harty*, 275 Conn. at 84. Moreover, the Plaintiff has not argued a manifest disregard of the law. Accordingly, the Plaintiff has failed to meet its burden of proof pursuant to Conn. Gen. Stat. §52-418(a)(4).

C. The Arbitrators Are Not Guilty of Misconduct.

In its Application to Vacate, Plaintiff alleged that "the SBMA panel was guilty of misconduct and other actions by which Mr. Santiago's contractual rights have been prejudiced: to wit, a panel member refused to disclose that he was related by marriage to a sponsor of a so-called 'Police Accountability Bill recently passed in the Connecticut General Assemby (sic)." Application ¶ 8. This was apparently a reference to Conn. Gen. Stat. § 52-418(a)(3), which

allows an arbitration award to be vacated when the arbitrator is "guilty of misconduct." No reference is made in the Application to any claim of "evident partiality" under § 52-418(a)(2).

Apparently recognizing that § 52-418(a)(3) would be to no avail, the Plaintiff raises a new legal theory in its Brief, shifting the basis of its argument from § 52-418(a)(3), to § 52-418(a)(2), changing its theory from "guilty of misconduct" to "evident partiality." The Plaintiff does not include *any discussion* in its Brief regarding the "guilty of misconduct" standard under § 52-418(a)(3). Therefore, any claim under § 52-418(a)(3) should be deemed abandoned as it has not been briefed by the Plaintiff.

Further, the claim of "evident partiality" should not be considered as it was not raised in the Application to Vacate. However, Defendant will address why the "evident partiality" standard is not met in this case.

To begin with, Plaintiff's claim is that (1) after the hearing and decision (2) they heard that Arbitrator Murphy was married to a lawyer who is related (they do not state the nature of the relationship) to a sponsor of the so-called Police Accountability Bill, and (3) that somehow establishes a bias as to the ultimate question in this case – whether there was just cause to terminate the Grievant for using excessive force. Plaintiff's Brief at 2. This issue was not raised during the arbitration hearings, and importantly, the Plaintiff concedes it does not have evidence to support its speculation and therefore, seeks a remand or leave to engage in discovery on this matter. Courts are extremely limited in their authority to remand cases back to arbitrators (correction of an apparent mistake on the face of the award, non-adjudication of a submitted issue, and clarification of an ambiguity), as set forth by the Connecticut Supreme Court in *Hartford Steam Boiler Inspection & Insurance Co.*, 271 Conn. 474 (1985), and none of the bases for which a remand is permitted are even arguably raised by these facts.

Plaintiff has not cited any authority to support remanding a case to allow for discovery, much less discovery in the form of interrogating an arbitrator. The standard under the statute is "evident" partiality – plainly, the partiality claimed here is not "evident" if Plaintiff has no evidence to support it and must go on an after-the-fact fishing expedition to attempt to find any support for what is nothing more than conjecture.

Even if Plaintiff can establish that the claimed familial connection exists, the relationship is too remote to establish actual partiality on the part of the arbitrator. Moreover, it has failed to cite any authority for its position that these tenuous relationships inherently establish partiality as to the issue before the Panel.

The burden is on the Plaintiff to put forth significant evidence:

> A party seeking to vacate an arbitration award on the ground of evident partiality has the burden of producing sufficient evidence in support of the claim. An allegation that an arbitrator was biased, if supported by sufficient evidence, may warrant the vacation of the arbitration award. . . . .The burden of providing bias or evident partiality pursuant to §52-418(a)(2) rests on the party making such a claim, and requires more than a showing of an appearance of bias. . . .In construing § 52-418(a)(2), [our Supreme Court] concluded that evident partiality will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration. To put it in the vernacular, evident partiality exists where it reasonably looks as though a given arbitrator would tend to favor one of the parties.

Alexson v. Foss, 276 Conn. 599, 617 (2006) (internal quotation marks omitted). It is not enough to put forth evidence from which one *could* conclude partiality, but, as stated in *Alexson*, the evidence must be strong enough that a reasonable person would **have to conclude** partiality.

There is a presumption that administrative personnel serving as adjudicators are unbiased. *Petrowski v. Norwich Free Academy*, 199 Conn. 231, 236 (1986) (citing *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)) and other federal cases). A disqualifying conflict of interest "must be realistic and more than 'remote.'" *Id.* (citing *Marshall v. Jerrico*, 446 U.S. 238, 250 (1980).

"The alleged partiality must be direct, definite and capable of demonstration rather than remote, uncertain and speculative." *Hottle v. BDO Seidman, LLP*, 74 Conn. App. 271, 279 (2002) (internal quotation marks omitted). With respect to administrative adjudicators, "the plaintiff must demonstrate actual bias, rather than mere potential bias, of the board members challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable." *Moraski v. Conn. Bd. of Exam'rs of Embalmers and Funeral Dirs.*, 291 Conn. 242, 262 (2009) (quoting *Clisham v. Bd. of Police Comm'rs of Borough of Naugatuck*, 223 Conn. 354 (1992)) (internal quotation marks omitted).

Courts have held far less remote associations insufficient to vacate an arbitration decision:

- In *Local 530, AFSCME, Council 15 v. City of New Haven*, 9 Conn. App. 260 (1986), the Appellate Court considered whether an arbitrator on a panel of the SBMA, who had been appointed to by the Mayor of New Haven to serve on the Board of Regional Water Authority, would therefore be disqualified by bias in favor of the City of New Haven in a labor dispute. The Appellate Court found any "appearance of bias" in that case to be too remote and nebulous to have required disqualification. *Id.* at 271.
- In *Schleif v. Schleif*, No. FA084008477, 2012 WL 593477 (Conn. Super. Ct. Feb. 1, 2020), the plaintiff's attorney and the arbitrator were co-founders and co-presidents of a professional association and the relationship was not disclosed in the arbitration engagement letter. The court noted that effective arbitration depends on experienced practitioners who may have crossed paths in professional activities and associations. The court concluded, "While in this

case it may have been better practice to reveal the association of plaintiff's counsel and the arbitrator before the arbitration proceedings, neither the evidence nor the arbitrator's decision reveals evident partiality." *Id.* at *2.

- In *Henry v. Imbruce*, 178 Conn. App. 820 (2017), the Appellate Court held that the fact that the arbitrator had previously arbitrated the personal divorce of an attorney who represented the defendants in an unrelated matter was insufficient to vacate the arbitration award and was too trivial to require disclosure by the arbitrator. (This case was adjudicated under the Federal Arbitration Act, but the relevant standards, *i.e.* evident partiality, are the same between the federal and state law.)

In order to prove evident partiality, "the plaintiff must show more than the adjudicator's announced previous position about law or policy," but "must make a showing that the adjudicator has prejudged adjudicative facts that are in dispute." *Clisham*, 223 Conn. at 362.

Here, the Plaintiff has pointed to no evidence in the record to support a claim of partiality, let alone sufficient evidence to meet its burden of proof. Much less than showing the *arbitrator's* announced previous position about law or policy, which itself would be insufficient, Plaintiff has offered only a claim that the *arbitrator's spouse's unspecified relative* has announced a previous position about law or policy.

Even had the Plaintiff established the alleged familial relationship, that is too remote, too nebulous, and too speculative to establish bias on the part of the arbitrator. The idea that there would be "partiality" of an arbitrator in favor of the City in a case involving excessive force because the arbitrator's spouse's unspecified relative sponsored legislation on a related topic is far more remote, even if proven, than the potential conflict in the case where the arbitrator

himself (not a relative of a relative) was appointed to a position by the chief executive officer of a party in the case. *See Local 530, AFSCME, Council 15*, 9 Conn. App. 260.

Finally, it must be noted that the decision of the tripartite SBMA Panel was unanimous, a relative rarity in a setting where one arbitrator represents the interest of labor, one represents the interest of management, and the third is considered the "neutral." In other words, by its very nature and design, members of a tripartite labor panel in Connecticut are inclined to have certain leanings[1]. Yet in this case, even the labor member found there was just cause to terminate the Grievant. Given that the Plaintiff only alleges partiality on the part of one of the arbitrators, and all three found just cause for termination, Plaintiff's efforts to vacate the award on the basis of "evident partiality" should be rejected.

D. Plaintiff's Argument that the Award Does Not Draw its Essence from the Agreement Because It Allowed Expert Testimony to Be Admitted Must Also Fail.

During the hearings on this matter, the City offered the expert testimony of Attorney Eric Daigle on the issue of whether the Grievant's actions constitute excessive force under the City's General Order as well as state and federal law. Plaintiff characterizes this as "after-acquired evidence"; however, that characterization is not accurate. After-acquired evidence in the labor context is evidence discovered after disciplinary action has been taken in support of the decision previously made to take disciplinary action. Elkouri & Elkouri, *How Arbitration Works* 8-85 to 8-86 (Kenneth May ed., 8th ed. 2016) . Evidence of pre-discipline misconduct is generally admissible in arbitration hearings, while evidence of post-discipline misconduct generally is not. *Id.* Typically, such evidence is either further evidence of the original basis for discipline, or a separate independent incident which arguably supports discipline.

[1] Conn. Gen. Stat. § 31-91

The testimony complained of in the Application and Plaintiff's Brief is neither additional evidence, nor evidence of additional wrongdoing; rather, it was expert testimony offered to assist the arbitrators, who are not familiar with the law surrounding excessive force, to understand whether the actions for which the Grievant was terminated constituted excessive force -- a relatively technical concept. Accordingly, Plaintiff mischaracterizes this testimony as "after-acquired evidence." And as noted, even if it were, it was admissible in a labor arbitration context.

Furthermore, in labor arbitration, as in other administrative proceedings, the rules of evidence do not apply. Indeed, the Regulations of the SBMA provide in relevant part:

> The parties may offer such evidence **as they desire** and shall produce such additional evidence as the panel members may deem necessary to an understanding and determination of the dispute. The panel members shall be the judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all panel members and both parties, except where any of the parties is absent, in default or has waived his right to be present.

Conn. Agencies Regs. § 31-97-37(a) (emphasis added). Based upon the foregoing regulation, the City was allowed to introduce this testimony, indeed any evidence it desired in support of its case and the Panel was well within its rights and obligations to consider it and give it whatever weight they chose.

Ironically, it would have been grounds to vacate the award had this testimony not been admitted. One of the statutory grounds for vacatur is the refusal of arbitrators to hear evidence "pertinent and material to the controversy." Conn. Gen. Stat. §52-418(a)(3). This point was made clear recently in a case before Superior Court Judge Glen Pierson, in *City of Shelton v. Shelton Police Union*, Docket No. AAN-CV-19-6033187-S, 2020 WL 8019757 (Conn. Super. Ct. Nov. 5, 2020). That case did in fact involve after-acquired evidence. At issue were a number

of racially offensive social media postings by a police officer for which the officer was terminated. At the arbitration hearing before SBMA on the grievance filed by the officer's union, the city attempted to offer evidence of additional offensive social media postings at or around the time of the ones for which the grievant was disciplined. The SBMA did not admit the evidence, sustained the grievance, and reinstated the officer. The city filed an application to vacate on, among other grounds, the basis that the panel refused to admit into evidence the additional social media post. After noting the longstanding policy favoring arbitration and judicial deference, Judge Pierson granted the application to vacate on the basis that the arbitrators were guilty of misconduct in not allowing the additional social media posts into evidence, citing Conn. Gen. Stat. §52-418(a)(3).

So too, here, had the SBMA Panel not allowed the expert testimony into evidence, it would have violated § 31-97-37 of the Regulations of Connecticut State Agencies and committed misconduct as defined by Conn. Gen. Stat. §52-418(a)(3). *A fortiori*, Plaintiff's argument that the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made under §52-418(a)(4) is groundless.

Lastly, as noted above, the Award does draw its essence from the collective bargaining agreement which requires just cause for discipline. The issue was framed as to whether there was just cause for termination, and the Award concludes that there was just cause. It is hard to imagine a clearer case of where the Award draws its essence from the agreement.

VI. CONCLUSION

As noted, *infra* at Section IV above, judicial authority provides that as long as the Award conforms to the submission and draws its essence from the agreement, the trial court's review

must end there. *AFSCME, Council 4, Local 2663 v. Dep't of Children & Fams.*, 317 Conn. 238, 259 (2015). Inasmuch as the Plaintiff has failed to establish any basis to vacate the arbitration award under Conn. Gen. Stat. §52-418(a), the Plaintiff's Application to Vacate should be DENIED.

The Defendant
CITY OF NEW HAVEN

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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing Memorandum of Law in Opposition to Application to Vacate Arbitration Award has been emailed and mailed via first class mail, postage prepaid, on this 14th day of January, 2022 to:

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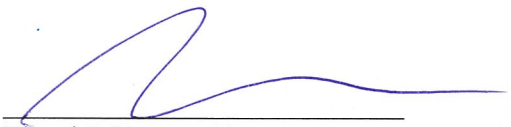

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